



Pillsbury
Winthrop
Shaw
Pittman^{LLP}

2300 N Street, N.W.
Washington, D.C. 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

Paul A. Cicelski
202.663.8413
paul.cicelski@pillsburylaw.com

November 16, 2007

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

**Re: Request for Extension of Waiver of the "Use or Lose" Deadline
MB Docket No. 03-15
WFGX-DT, Fort Walton Beach, FL (FIN #6554)**

Dear Ms. Dortch:

On behalf of WFGX Licensee, LLC, permittee of digital television station WFGX-DT, Fort Walton Beach, Florida, this letter is to request an extension of the six-month waiver of the July 1, 2006 replication maximization interference protection deadline (the "use or lose deadline") granted to the licensee in the Commission's *Use or Lose Order*.^{1/}

In September 2004, after a lengthy rulemaking proceeding, the FCC granted a construction permit for WFGX-DT to provide digital service from a proposed tower located at the "Midway Site" using an omni-directional antenna with a centerline height of 215.7 meters Above Ground Level ("AGL") and 223.3 meters Above Mean Sea Level ("AMSL"). See BMPCDT-20040204AAK. At the time, WFGX intended to modify and increase the height of an existing tower (ASR No. 1029918) located at the Midway Site, which has a height of 152.5 meters AGL and 160.1 meters AMSL. See *id.*

^{1/} DTV Build-Out; Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines; Requests for Wavier of the August 4, 2005 "Checklist" Deadline, Order, 41 CR 590 (2007).

Following the grant of the CP, the Fort Walton Beach area experienced severe hurricanes that delayed the structural evaluation of the tower necessary for the modification. *See* BEPCDT-20050118ADZ. During the Fall of 2004, Hurricanes Jeanne and Ivan struck the Florida Panhandle region, and in July 2005 Hurricane Dennis also swept through the area. The hurricanes damaged the tower at the Midway Site and also the tower at the site where WFGX subsequently proposed to relocate,² costing millions of dollars in repairs. In 2005, after repairs to the 2004 hurricane damage to the towers were underway, WFGX began evaluating the feasibility of increasing the height of the approximately 150 meter tower at the Midway Site and learned that high wind loading conditions in this hurricane-prone area would make increasing the tower height unwise and impractical. On March 7, 2005, WFGX began low-power digital operations pursuant to an STA and started researching the feasibility of moving to another tower in the area. *See* BDSTA-20050307AEG.

In November 2005, WFGX submitted an application requesting Commission authority to modify its digital CP to allow the station to relocate its transmitter site to an existing multi-station tower structure and operate at different technical parameters. *See* BMPCDT-20051108AFS. The application sought a waiver of the Commission's filing freeze on applications that proposed increases in a station's service area. Grant of the application would serve the public interest by increasing DTV service and introducing new network programming (My Network TV) to more than a half-million people without causing any unacceptable level of new interference to stations in the market. The relocation would also facilitate the expeditious deployment of a full-power DTV station and avoid the unnecessary and costly construction of a new tower in the community. However, in a letter dated March 29, 2006 the Media Bureau dismissed the application based upon the filing freeze.

On April 28, 2006, WFGX filed a petition for reconsideration of the Bureau decision, which remains pending. In the petition for reconsideration, WFGX demonstrated that the Bureau misstated and misapplied the standard for granting a waiver of the filing freeze and that, properly considered, the Bureau should have granted the waiver request and the application to modify the station's CP to allow the relocation of WFGX's digital facilities. On May 18, 2006, WFGX and its counsel also met with the Chief of the Video Division and her staff to discuss the pleading.

Given the demonstrated benefits associated with a grant of WFGX's application to relocate facilities as detailed in the modification application and pending petition for reconsideration, the public interest would be served by granting the requested waiver of the "use or lose" deadline so as to permit time for the grant of the pending petition for reconsideration. Once the petition is granted and the modification application is reinstated, WFGX will expeditiously file a license application for those facilities.

² WEAR-TV, which is owned by the parent company of WFGX, is located on this tower.

Should there be any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Cicelski". The signature is fluid and cursive, with a large initial "P" and a stylized "C" at the end.

Paul A. Cicelski

533070-0001007